

Resolution No.: 15-1164
Introduced: October 11, 2005
Adopted: October 11, 2005

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By County Council

SUBJECT: DPWT Docket No. AB669
Abandonment - Portion of Kensington Boulevard
Wheaton, Maryland

Background

1. By letter dated November 5, 2004, from Linowes and Blocher, on behalf of its clients, Anchor Inn Properties, LLC, Grandview Properties, LLC, Old Bladensburg Properties, LLC, and 11416 Georgia Avenue General Partnership, the Applicants, application to the County was made to abandon a portion of Kensington Boulevard in Wheaton. The subject area is immediately north of University Boulevard and is bounded to the west by Grandview Avenue and on the east by Georgia Avenue and is more particularly described on the attached metes and bounds description and sketch by MHG.
2. A Public Hearing to consider the abandonment proposal was conducted on April 6, 2005, by the Designee of the County Executive.
3. The Police Department did not comment and concurrence with the proposed abandonment is assumed.
4. Washington Suburban Sanitary Commission did not comment and concurrence with the proposed abandonment is assumed.
5. Washington Gas did not comment and concurrence with the proposed abandonment is assumed.
6. Potomac Electric Power Company had no objection to the proposed abandonment.
7. Verizon did not comment and concurrence with the proposed abandonment is assumed.
8. Maryland-National Capital Park and Planning Commission conditioned its approval upon site plan approval of any development proposal that incorporates the subject right-of-way to be abandoned.

9. The Department of Public Works and Transportation conditioned approval upon Applicants recording a plat of abandonment within 24 months from the date of the County Council Resolution approving the abandonment and further conditioned upon the County's reservation of rights for any necessary easements for County storm drain facilities or public utility facilities within the area.
10. The Department of Fire and Rescue Services had no objection to the proposed abandonment.
11. The County Executive recommends approval of the proposed abandonment subject to the agency and public utility conditions.

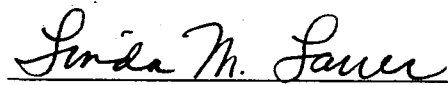
Action

The County Council for Montgomery County, Maryland, finds that the portion of Kensington Boulevard described on Schedule A is no longer necessary for public use, pursuant to Section 49-62 and Section 49-63 of the Montgomery County Code (2004), as amended, and approves the abandonment subject to the following conditions:

1. The Applicant shall record all necessary easements and if necessary relocate facilities for any affected public utility companies and Montgomery County for storm drainage facilities in place.
2. The Applicant shall bear all costs for the preparation and recordation of all necessary easement documents and plats. Within twenty-four months from the date of this Resolution Applicant must record a plat of abandonment incorporating the former right-of-way.
3. The County Attorney shall record among the Land Records of Montgomery County, Maryland, a copy of the Resolution approving abandonment of the subject area, subject to the reservation of rights specified in this Resolution.
4. Any person aggrieved by the action of the Council for abandonment may appeal to the Circuit Court within 30 days after the date such action is taken by Council.

Attachment: Metes and Bounds Description and Sketch by MHG

This is a correct copy of Council Action.


Linda M. Lauer, Clerk of the Council

DESCRIPTION OF KENSINGTON

BOULEVARD ABANDONMENT

Being a parcel of land, located in Election District No. 13 of Montgomery County, Maryland, being that portion of Kensington Boulevard that is south of Block 44 in Subdivision of "Wheaton Hills", north of Block I in subdivision "Triangle Park", east of Grandview Avenue and west of Georgia Avenue and being more particularly described by Macris, Hendricks & Glascock, P.A. in the Maryland State Plane datum as follows:

Beginning for said parcel of land at a point at the southwesterly corner of Lot 11, Block 44 as delineated on a plat of subdivision entitled "Wheaton Hills" as recorded among the Land Records of Montgomery County, Maryland as Plat No. 3874, said point also being on the easterly right-of-way line of Grandview Avenue, then leaving said easterly right-of-way line of Grandview Avenue and binding with the southerly limits of said Lot 11, Block 44 and the southerly limits of Parcel B, Block 44 as delineated on a Plat of Subdivision entitled "Wheaton Hills" as recorded among said Land Records as Plat No. 2058

1. South 87°58'14" East, 271.01 feet to a point at the southeasterly corner of said Parcel B, Block 44, said point also being on the westerly right-of-way line of Georgia Avenue, Maryland Route 97 as delineated on SRC Plat No. 9271, then binding

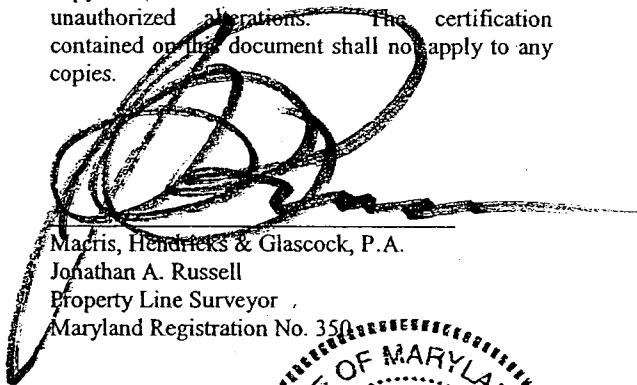
with part of said westerly right-of-way line of

Georgia Avenue, MD Rte. 97

2. South $83^{\circ}37'40''$ East, 4.73 feet to a point, then
3. South $13^{\circ}36'29''$ East, 29.97 feet to a point, then leaving said westerly right-of-way line of Georgia Avenue, MD Rte. 97 and binding with the southerly limits of said Kensington Boulevard and the northerly limits of Lots 1-3, Block I as delineated on a Plat of Subdivision entitled "Triangle Park" as recorded among said Land Records as Plat No. 3035 and the northerly limits of Lot 4, Block I as delineated on a plat of subdivision entitled "TRIANGLE PARK" as recorded among said Land Records as Plat No. 5686
4. North $87^{\circ}33'20''$ West, 224.00 feet to a point, then
5. South $01^{\circ}22'10''$ East, 9.74 feet to a point, then
6. North $88^{\circ}37'20''$ West, 58.00 feet to a point at the northwest corner of said Lot 4, Block I, said point also being on the easterly right-of-way line of said Grandview Avenue, then leaving said Lot 4, Block I and binding with part of said easterly right-of-way line of Grandview Avenue

7. North 01°33'23" West, 38.06 feet to the point of beginning; containing an area of 8,453 square feet or 0.19406 of an acre of land and as delineated on Schedule B attached hereto and made a part hereof by this reference.

Certified correct to the best of our professional knowledge, information and belief. If the seal and signature are not violet colored, the document is a copy that should be assumed to contain unauthorized alterations. The certification contained on this document shall not apply to any copies.


Marris, Hendricks & Glascock, P.A.
Jonathan A. Russell
Property Line Surveyor
Maryland Registration No. 350



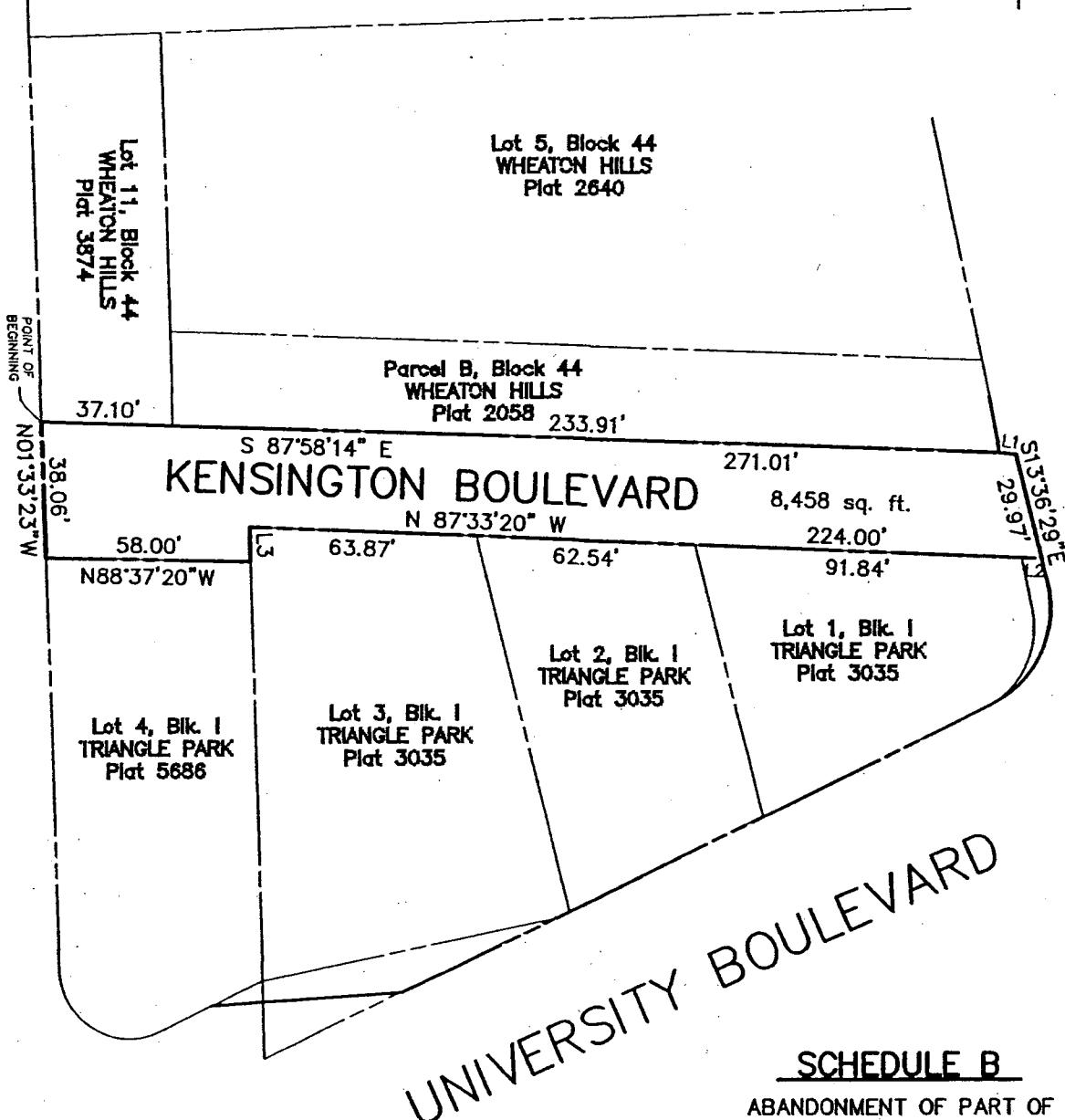
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04-231



LINE TABLE		
LINE	BEARING	DISTANCE
L1	S 83°37'40" E	4.73'
L2	N 87°33'20" W	5.75'
L3	S 01°22'10" E	9.74'

GRANDVIEW AVENUE
80' R.O.W

GEORGIA AVENUE
MD RTE. 97



SCHEDULE B

ABANDONMENT OF PART OF KENSINGTON BOULEVARD

SCALE: 1" = 50' NOVEMBER, 2004
MONTGOMERY COUNTY, MARYLAND



MHG

Macris, Hendricks & Glascock, P.A.
Engineers • Planners
Landscape Architects • Surveyors

9220 Wightman Road, Suite 120
Montgomery Village, Maryland
20886-1279

Phone 301.670.0840
Fax 301.948.0693
www.mhga.com

LINOWES
AND BLOCHER LLP
ATTORNEYS AT LAW

Exhibit 1

AB 669

November 5, 2004

Todd D. Brown
301.961.5218
tdb@linowes-law.com

By Hand Delivery

The Honorable Douglas M. Duncan
Montgomery County Executive
101 Monroe Street, 2nd Floor
Rockville, Maryland 20850

Re: Petition for Road Abandonment -- Kensington Boulevard, Wheaton

Dear Mr. Duncan:

On behalf of Petitioners, Anchor Inn Properties LLC, Grandview Properties, LLC, Old Bladensburg Properties, LLC and 11416 Georgia Avenue General Partnership, we hereby request the abandonment of a segment of Kensington Boulevard in Wheaton, Maryland, pursuant to Sections 49-62 through 49-68 of the Montgomery County Code 1994 (as amended). The segment of Kensington Boulevard to be abandoned ("Abandonment Area") is comprised of 8,453 square feet and is shown in yellow on the Montgomery County Tax Map attached hereto and made a part hereof as Exhibit "A". This road segment is more particularly described and shown by metes and bounds and sketch attached hereto and made a part hereof as Exhibit "B".

The segment of Kensington Boulevard to be abandoned is not in public use. The Abandonment Area is improved as a private parking lot supporting the adjacent Anchor Inn Restaurant property. The Abandonment Area also has significant changes in elevation which are addressed by existing retaining walls. The Abandonment Area does not appear to have been in public use for many years.

No property will be denied an adequate means of ingress or egress as a result of the road abandonment. In this regard, access to the adjacent properties will be maintained via Grandview Avenue, Georgia Avenue and/or University Boulevard West. Further, the right-of-way is not necessary for present public or anticipated public use in the foreseeable future. As described above, the segment of Kensington Boulevard sought to be abandoned is not in public use and has not been in public use for many years. We further note the Approved and Adopted Wheaton CBD and Vicinity Sector Plan's Proposed Street and Highway Plan clearly contemplates the abandonment of this segment of Kensington Boulevard (Exhibit "C").

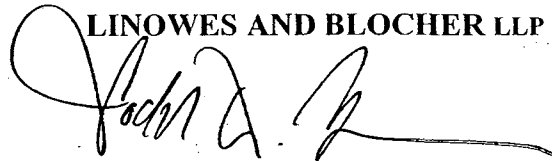
The Honorable Douglas M. Duncan

November 5, 2004

Page 2

Lastly, we have enclosed as Exhibit "D" a complete list of abutting property owners. Also enclosed is a check in the amount of \$2,500.00 representing the filing fee for this abandonment petition. If additional information is needed, please contact us.

Very truly yours,

LINOWES AND BLOCHER LLP

Todd D. Brown

Enclosures

cc: Ms. Cynthia Brenneman, Director, Office of Real Estate
Ms. Eileen Basaman, Associate County Attorney
Mr. Leonard Greenberg

H 6

EXHIBIT A

AB 669

W1200

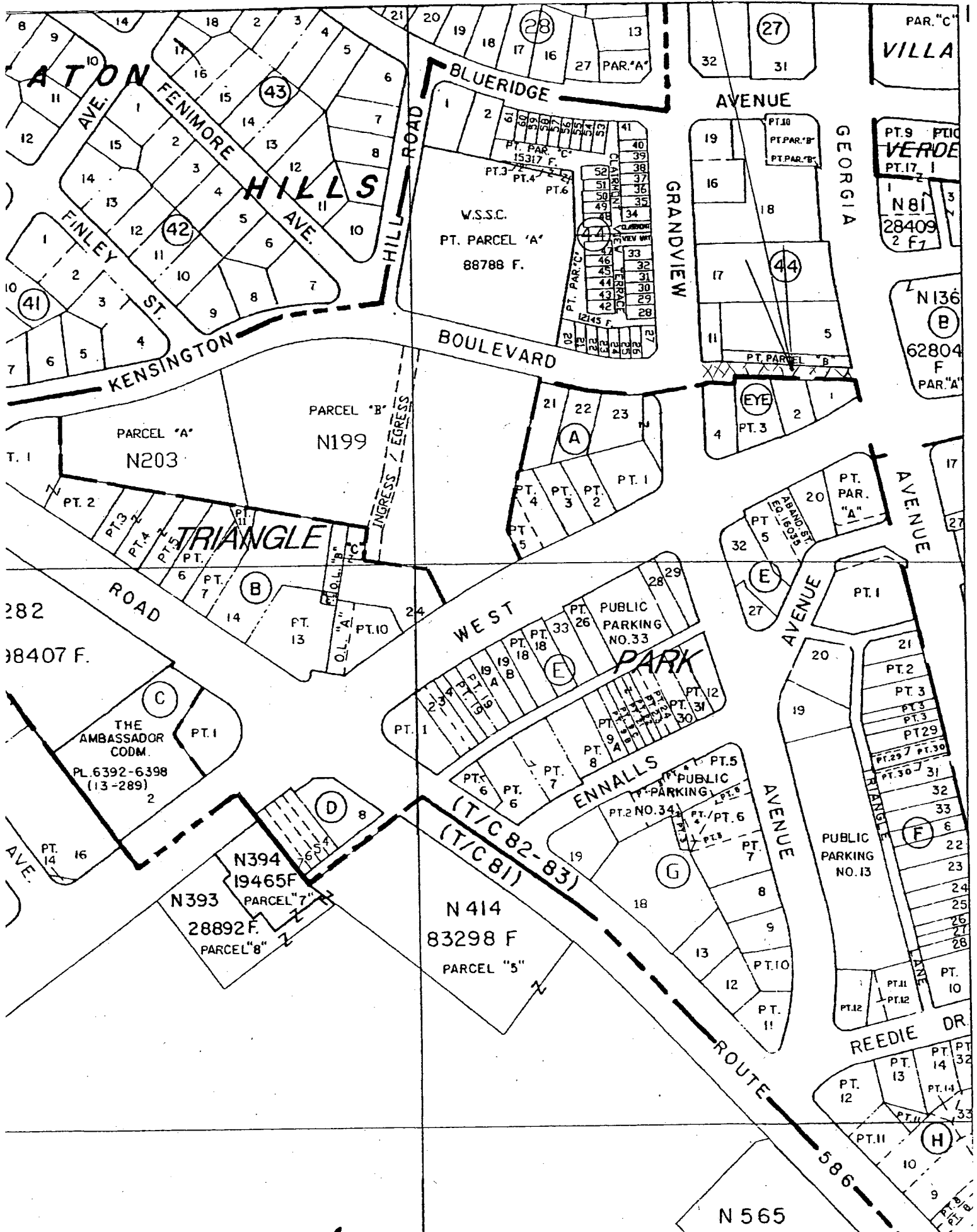


EXHIBIT B

DESCRIPTION OF KENSINGTON

BOULEVARD ABANDONMENT

Being a parcel of land, located in Election District No. 13 of Montgomery County, Maryland, being that portion of Kensington Boulevard that is south of Block 44 in Subdivision of "Wheaton Hills", north of Block I in subdivision "Triangle Park", east of Grandview Avenue and west of Georgia Avenue and being more particularly described by Macris, Hendricks & Glascock, P.A. in the Maryland State Plane datum as follows:

Beginning for said parcel of land at a point at the southwesterly corner of Lot 11, Block 44 as delineated on a plat of subdivision entitled "Wheaton Hills" as recorded among the Land Records of Montgomery County, Maryland as Plat No. 3874, said point also being on the easterly right-of-way line of Grandview Avenue, then leaving said easterly right-of-way line of Grandview Avenue and binding with the southerly limits of said Lot 11, Block 44 and the southerly limits of Parcel B, Block 44 as delineated on a Plat of Subdivision entitled "Wheaton Hills" as recorded among said Land Records as Plat No. 2058

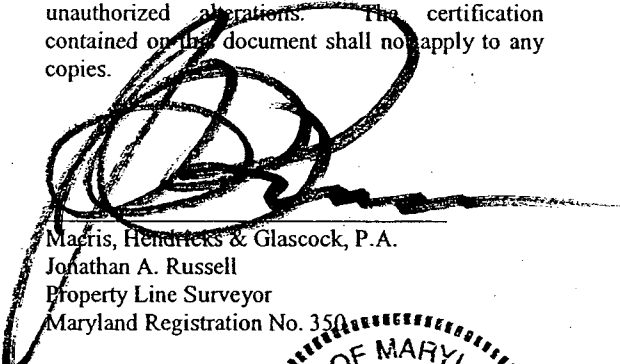
1. South 87°58'14" East, 271.01 feet to a point at the southeasterly corner of said Parcel B, Block 44, said point also being on the westerly right-of-way line of Georgia Avenue, Maryland Route 97 as delineated on SRC Plat No. 9271, then binding

with part of said westerly right-of-way line of
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2. South 83°37'40" East, 4.73 feet to a point, then
3. South 13°36'29" East, 29.97 feet to a point, then leaving said
westerly right-of-way line of Georgia Avenue,
MD Rte. 97 and binding with the southerly limits
of said Kensington Boulevard and the northerly
limits of Lots 1-3, Block I as delineated on a Plat
of Subdivision entitled "Triangle Park" as
recorded among said Land Records as Plat No.
3035 and the northerly limits of Lot 4, Block I as
delineated on a plat of subdivision entitled
"TRIANGLE PARK" as recorded among said
Land Records as Plat No. 5686
4. North 87°33'20" West, 224.00 feet to a point, then
5. South 01°22'10" East, 9.74 feet to a point, then
6. North 88°37'20" West, 58.00 feet to a point at the northwest
corner of said Lot 4, Block I, said point also
being on the easterly right-of-way line of said
Grandview Avenue, then leaving said Lot 4,
Block I and binding with part of said easterly
right-of-way line of Grandview Avenue

7. North 01°33'23" West, 38.06 feet to the point of beginning; containing an area of 8,453 square feet or 0.19406 of an acre of land and as delineated on Schedule B attached hereto and made a part hereof by this reference.

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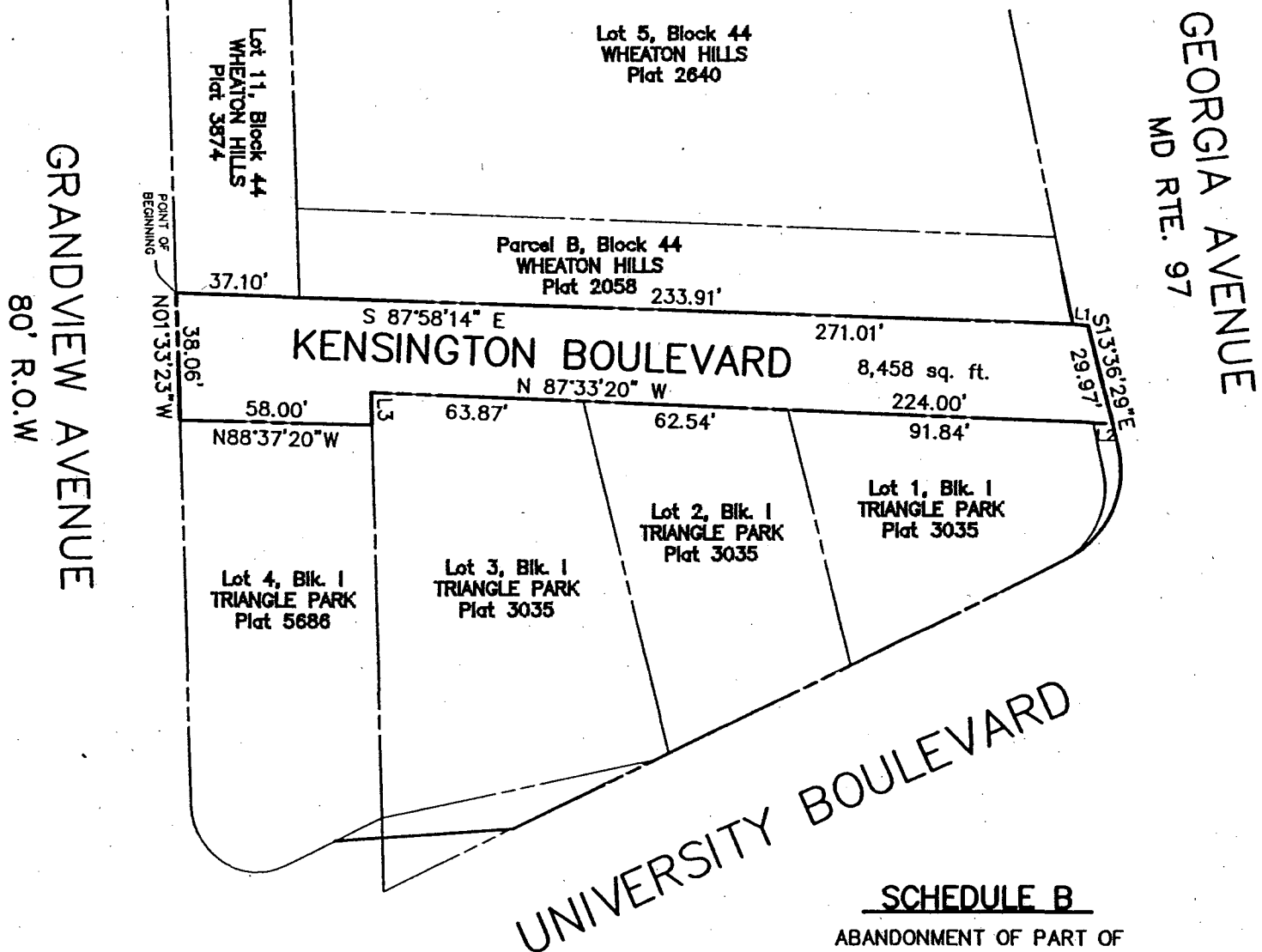

Macris, Hendricks & Glascock, P.A.
Jonathan A. Russell
Property Line Surveyor
Maryland Registration No. 350



SA001JR
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LINE TABLE		
LINE	BEARING	DISTANCE
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L2	N 87°33'20" W	5.75'
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UNIVERSITY BOULEVARD

SCHEDULE B
ABANDONMENT OF PART OF
KENSINGTON BOULEVARD

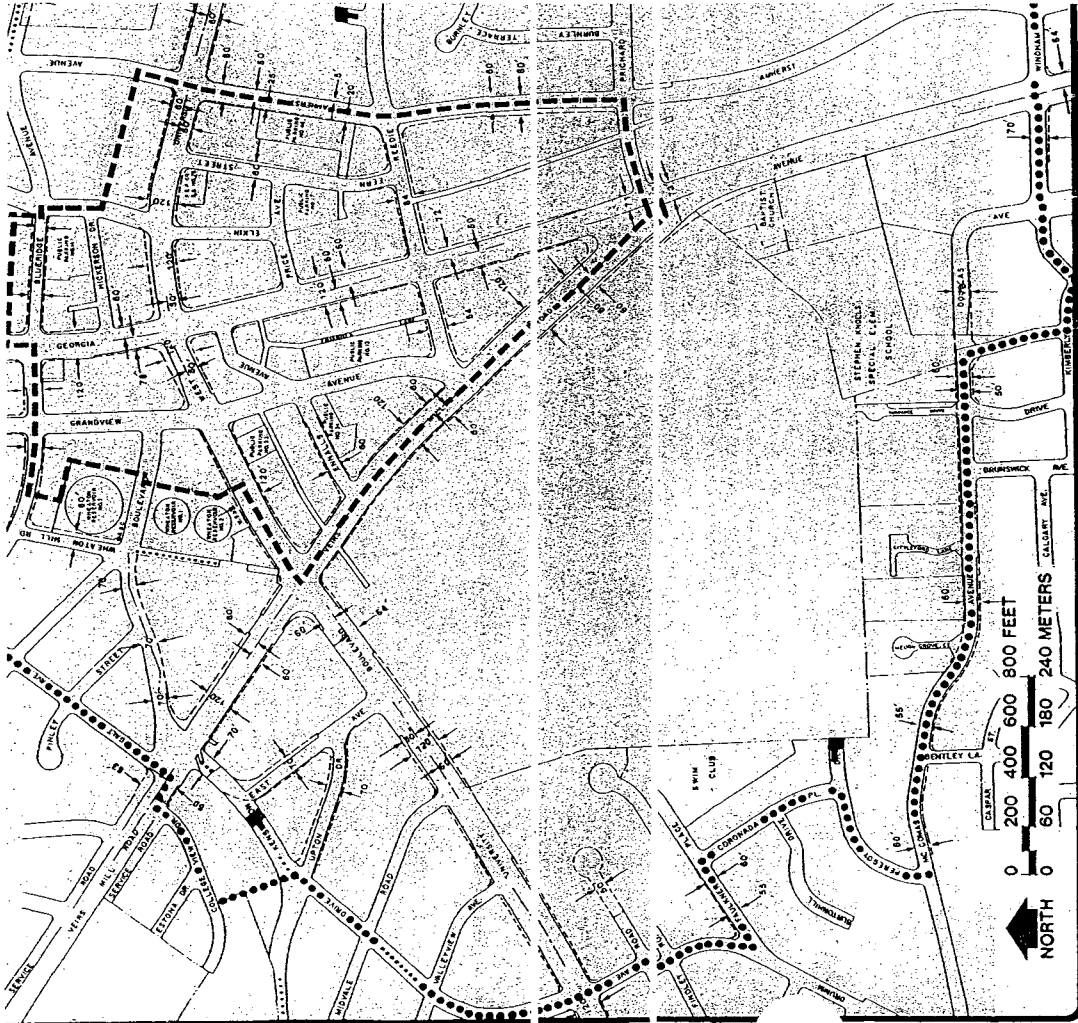
SCALE: 1" = 50' NOVEMBER, 2004
MONTGOMERY COUNTY, MARYLAND



Macris, Hendricks & Glascock, P.A.
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9220 Wightman Road, Suite 120
Montgomery Village, Maryland
20886-1279

Phone 301.670.0840
Fax 301.948.0693
www.mhga.com



PROPOSED STREET AND HIGHWAY PLAN

100' 100' 100'

EXISTING STREET RIGHT-OF-WAY

PROPOSED STREET RIGHT-OF-WAY

DEDICATED STREET NOT CONSTRUCTED

PROPOSED CUL-DE-SAC

NOTE: ALL STREET INTERSECTIONS SHALL HAVE TRUNCATED CORNERS TO PROVIDE FOR A MINIMUM OF 16' FOR SIDEWALKS

WHEATON

CENTRAL BUSINESS DISTRICT
SECTOR PLAN BOUNDARY

EXHIBIT D

LIST OF ABUTTING PROPERTY OWNERS

<u>Address</u>	<u>Property Description</u>	<u>Owner</u>
2509 W. University Blvd.	Lots numbered One (1), Two (2) and Three (3) in Block lettered Eye (I) in a subdivision known as "TRIANGLE PARK" per plat thereof recorded in Plat Book 42 at Plat No. 3035 among the Land Records of Montgomery County, Maryland; SAVING AND EXCEPTING that portion conveyed to the States Roads Commission in Liber 2315 at folio 401	Anchor Inn Properties, LLC
2521 W. University Blvd.	Lot number Four (4) in Block lettered Eye (I) in a subdivision known as "KLEINS' ADDITION TO TRIANGLE PARK" per plat thereof recorded in Plat Book 64 at Plat No. 5686 among the Land Records at Montgomery County Maryland	Grandview Properties, LLC
11402 Georgia Avenue	Lot numbered Five (5) in Block numbered Forty-four (44) in a subdivision known as "WHEATON HILLS" per plat thereof recorded in Plat Book 38 at Plat No. 2640 among the Land Records of Montgomery County, Maryland; and Part of Lot lettered "B" in Block numbered Forty-four (44) in a Subdivision known as "WHEATON HILLS" per plat thereof recorded in Plat Book 32 at Plat No. 2058 among the Land Records of Montgomery County, Maryland	Old Bladensburg Properties, LLC
11416 Georgia Avenue	Lot numbered (11) in Block numbered Forty-Four (44) in a subdivision known as "WHEATON HILLS" per plat thereof recorded in Plat Book XX at Plat No. 3874 among the Land Records of Montgomery County, Maryland	11416 Georgia Avenue General Partnership

**OFFICE OF THE COUNTY EXECUTIVE
EXECUTIVE OFFICE BUILDING
ROCKVILLE, MARYLAND 20850**

IN THE MATTER OF:

ABANDONMENT OF UNUSED PORTION OF KENSINGTON BOULEVARD,
WHEATON

DEPARTMENT OF PUBLIC WORKS AND TRANSPORTATION DOCKET
NO. AB669

BEFORE: Joseph F. Beach, Assistant Chief Administrative Officer

I. Background

By letter of November 5, 2004, Linowes and Blocher, LLP filed a petition on behalf of Anchor Inn Properties, LLC; Grandview Properties, LLC; Old Bladensburg Properties, LLC, and 11416 Georgia Avenue General Partnership ("petitioners") (Exh. 1) with the County Executive for abandonment of an unused portion of Kensington Boulevard in Wheaton, Maryland. A more complete description of the area that is the subject of this petition is in Exhibit 1B. Executive Order No. 86-05, dated March 25, 2005, (Exh. 2) authorized a public hearing on the petition. Public notice was provided by way of mailing notices to local civic associations of the public hearing (Exh. 3), newspaper publication in the Montgomery County Sentinel on March 24, 2005 and March 31, 2005 (Exh. 4), and a sign posted in the area of the proposed abandonment (Exh. 6). The hearing was held as scheduled on Wednesday, April 6, 2005, and testimony and evidence were received in support of the petition. There was no opposition to the petition.

II. Summary of Testimony and Evidence of Record

Michael Cassedy of the Department of Public Works and Transportation (DPWT) testified on behalf of Montgomery County concerning the petition for abandonment. Mr. Cassedy testified to the following:

ABANDONMENT OF UNUSED PORTION OF KENSINGTON BOULEVARD,
WHEATON (AB669)

1. The area of the abandonment is located north of University Boulevard and runs easterly from Grandview Avenue to Georgia Avenue.
2. The subject area of the abandonment has been used for years as part of the private parking lot for the Anchor Inn Restaurant. The petitioners own all of the adjoining properties.
3. The County acquired this portion of the right of way by prescriptive easement prior to 1850 and it does not appear to have been in public use for many years so the abandonment of this right of way would not affect access to any properties other than those belonging to the applicants.
4. Currently the abandonment request is not associated with a development plan for the area.

Mr. Stephen E. Crumb, P.E. of Macris, Hendricks, and Glascock, P.A. testified at the hearing in support of the petition. Mr. Crumb, through the use of area photographs submitted into the record, indicated that the subject area was generally used for private parking (Exh. 12). Mr. Crumb also testified that the abandonment was consistent with the Approved and Adopted 1990 Wheaton Central Business District and Vicinity Sector Plan which anticipated the abandonment of the subject area as part of the consolidation of property in the "Wheaton Market Place" area (pages 96, 28, and 47). Mr. Crumb further testified that the subject area was not in current or planned future public use, that the abandonment area was not the sole means of ingress or egress for any of the adjoining properties, and that granting the petition for abandonment would not have any effect on vehicular circulation patterns in the vicinity of the properties.

ABANDONMENT OF UNUSED PORTION OF KENSINGTON BOULEVARD,
WHEATON (AB669)

In response from a question from the Hearing Examiner, Mr. Cassedy indicated that he had not received nor was he aware of any submittals for the record that indicated any opposition or expressions of concern from adjacent residents, businesses or governmental agencies to the proposed abandonment.

The exhibits indicate that the reviewing agencies and utilities, which have reviewed the petition, do not oppose the proposed abandonment. The Potomac Electric Power Company (PEPCO) by letter of March 17, 2005, offered no objection to the petition (Exh. 7). The Montgomery County Fire and Rescue Service, by an email dated April 6, 2005, stated no objection to the abandonment (Exh. 14). The Department of Public Works and Transportation in a memorandum dated June 8, 2005, stated that it does not object to the abandonment subject to the applicant granting any necessary easements for County storm drain facilities or public utility facilities with the subject area and provided that the petitioners prepare a new record plat incorporating the former right-of-way into its property within 24 months from the date of the County Council Resolution approving the abandonment (Exh. 15).

The hearing record was left open for thirty days to allow time for any further comment on this abandonment petition and to allow all agencies to respond.¹ MNCPPC submitted its recommendation of approval by letter dated June 27, 2005. MNCPPC's approval however was subject to the condition, "that any development proposal that incorporates the referenced right-of-way to be abandoned will require site plan approval."

¹ The Montgomery County Code provides in pertinent part that, "If the agency or governmental body does not file its recommendation within 60 days from the date of the application, the County Executive must presume that the agency or governmental body consents to the proposal." MCC 49-62(g) Several agencies had not responded within the period allowed for under the County Code. Therefore their approval is assumed in this report.

ABANDONMENT OF UNUSED PORTION OF KENSINGTON BOULEVARD,
WHEATON (AB669)

III. Conclusions and Recommendations

The abandonment of road rights-of-way is governed by the provisions of sections 49-62 and 49-63, Montgomery County Code. Section 49-62 permits application for abandonment of a right-of-way by any person or government agency, provides for public agency and utility company review, and requires a public hearing with notice. The hearing and notice procedures have been satisfied, and the public agencies and utility companies have been given an opportunity to review the petition for abandonment. All agencies and utilities have responded and their replies have been filed as exhibits of record. No agency or utility has objected to the proposed abandonment.

The substantive provisions of section 49-63 permit abandonment if the right-of-way is not needed for public use or if abandonment is necessary to protect the health, safety and welfare of the residents in the neighborhood. It precludes abandonment if the right-of-way is the sole means of access to any property.

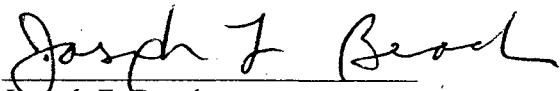
A finding that a road or right-of-way is no longer needed for current or foreseeable future public use typically is made where a right-of-way has not been and will not be used as such by the public, where a road has been relocated and the old right-of-way is no longer needed, or where, as a result of new development, a replacement thoroughfare or a redesigned thoroughfare network is provided that accommodates the public use requirement of the old right-of-way. In this case, the record shows that the subject of the abandonment petition is not in current public use and that it is not the sole means of egress or ingress to any property. The only current use of the property is for a private parking lot for the adjacent businesses which have all consented to the subject petition.

ABANDONMENT OF UNUSED PORTION OF KENSINGTON BOULEVARD,
WHEATON (AB669)

Chapter 49 of the County Code also provides that a petition for abandonment may be approved, "... if the record indicates by a preponderance of the evidence that ... the abandonment ... is necessary to protect the health, safety and welfare of the residents in the neighborhood of the right-of-way to be abandoned.... In assessing health, safety, and welfare issues, the Council may consider... the master plan applicable to the neighborhood ... safe and efficient pedestrian and vehicular traffic patterns ... in the immediate neighborhood." *MCC 49-63(e)*. The record also shows, through testimony received and documents submitted into the hearing record, that the abandonment is consistent with the master plan applicable to the neighborhood which is the Approved and Adopted 1990 Wheaton CBD and Vicinity Section Plan. The Sector Plan anticipated the subject abandonment as part of the consolidation of properties in the Wheaton market place area.

Accordingly, in light of the above, I recommend that the petition to abandon the County's interest in the subject right-of-way be approved.

Respectfully submitted,

A handwritten signature in cursive script, reading "Joseph F. Beach".

Joseph F. Beach
Assistant Chief Administrative Officer
July 13, 2005

ABANDONMENT OF UNUSED PORTION OF KENSINGTON BOULEVARD,
WHEATON (AB669)

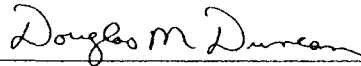
The Public Hearing Officer's recommendations have been reviewed and are approved.

Date: July 18, 2005



Bruce Romer, Chief Administrative Officer

Date: July 18, 2005



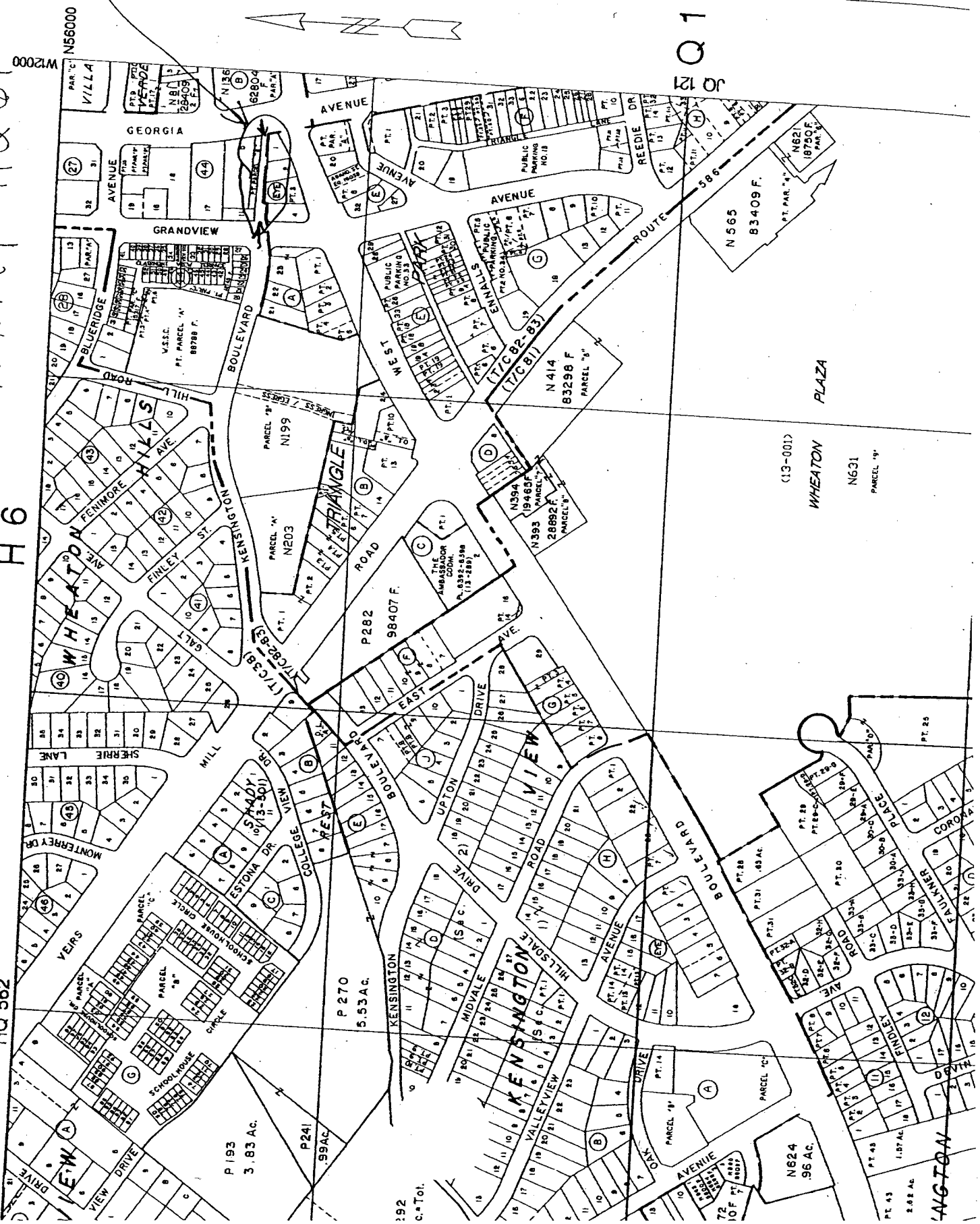
Douglas M. Duncan, County Executive

Location of Kensington Blvd

Tax Map HQ 61

H 6

HQ 562



192
C. Tot.

Q 1
12 30

192
C. Tot.